

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 11 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KENNETH GREGORY WILLIAMS,

No. 19-35405

Plaintiff-Appellant,

D.C. No. 6:18-cv-00144-AA

v.

MEMORANDUM*

OREGON DEPARTMENT OF
CORRECTIONS; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted July 7, 2023**
San Francisco, California

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

Oregon state prisoner Kenneth Gregory Williams appeals the adverse summary judgment in his 42 U.S.C. § 1983 action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), a dismissal based on statute of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

limitations, *Bird v. Dep't of Hum. Servs.*, 935 F.3d 738, 743 n.5 (9th Cir. 2019), a dismissal for failure to state a claim, *Benavidez v. County of San Diego*, 993 F.3d 1134, 1141 (9th Cir. 2021), and a dismissal based on sovereign immunity, *Crowe v. Or. State Bar*, 989 F.3d 714, 724 (9th Cir. 2021). We affirm.

The district court properly granted summary judgment for Williamson, Shelton, Gower, Gulick, Beamer, Sabotta, Stills, and Fhuere, because Williams failed to raise a genuine dispute of material fact as to whether he filed his claims against these defendants within the applicable limitations period. *See Douglas v. Noelle*, 567 F.3d 1103, 1109 (9th Cir. 2009) (the statute of limitations for 42 U.S.C. § 1983 actions is the state statute of limitations for personal injury actions—two years in Oregon). The actions complained of occurred more than two years prior to the filing of Williams's complaint in 2018; even if some actions were tolled during the pendency of administrative proceedings, all administrative appeals on the grievances were completed outside the limitations period except for one against defendant Stills, stemming from a March 31, 2015, incident raised in Grievance #EOCI-2015-04-024.

With respect to this claim, as the district court noted, Williams failed to exhaust his remedies. *See Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014). In addition, the conduct Williams now alleges in his federal complaint is not the same as the actions alleged against Stills in the initial grievance, and any new allegations

are surely unexhausted. Finally, even if we were to consider the claim, summary judgment was proper because Williams failed to raise a triable dispute as to whether Stills's conduct (as originally alleged in the grievance) harassing him and interfering with his medical care during a visit to a private neurosurgeon rises to the level of violating Williams's constitutional rights. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (“[A] prison official cannot be found liable . . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”).

The district court properly dismissed Williams's claims against VanHouten, Taylor, White, Bradford and Wilson as time-barred. *Douglas*, 567 F.3d at 1109. The district court properly dismissed Williams's claims against DaFoe, O'Brien, Sallee, Schnetsky, Hague, and Wick because Williams failed to allege facts sufficient to show that these defendants personally participated in a violation of his constitutional rights. *See Keates v. Koile*, 883 F.3d 1228, 1241 (9th Cir. 2018) (“[D]efendants cannot be held liable for a constitutional violation under 42 U.S.C. § 1983 unless they were integral participants in the unlawful conduct.”).

Williams's claims against the Oregon Department of Corrections are barred by the Eleventh Amendment. *See Pennhurst State Sch. & Hosp. v. Halderman*,

465 U.S. 89, 100 (1984) (Eleventh Amendment immunity applies to states and their departments “regardless of the nature of the relief sought”).

Williams’s claims against Kadlic Neuroscience Center, Wang, Carter, and Arredondo were properly dismissed because Williams failed to allege facts sufficient to show that these defendants are state actors. *See George v. Pac.–CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996) (plaintiff alleging infringement of constitutional rights by private parties must show that the infringement constitutes state action).

Williams’s motion to supplement the record on appeal (Docket Entry No. 30) is denied.

AFFIRMED.